IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition 6742 of 2005

Mrs Katy P Mistry ..Petitioner
vs
The Trustees of Parsi Panchayat Funds & Properties and ors ..Respondents

Mr. B K Raje for petitioner
Mr P S Dani for respondent nos.l,3,5,6, and 8

CORAM: S.U.KAMDAR J.

Dated 2l.l2.2005

P.C:

. The present petition challenges the order dated l.7.2005 passed by the Small Causes Court at Mumbai in interim notice no. 48 of 2005. By the said order an amendment application has been granted. The amendment in terms seeks deletion of an admission in para 4 of the plaint which reads as under:

> "However, the defendant had been permitted to use and occupation of the suit premises as a gratuitous licensee,without payment of any charge and/or compensation."

By the amendment the said admission is sought by deleting the admission, the averment is sought to be added that the petitioner is not a gratuitous

licensee but he is a licensee on payment of compensation of Re l/- per week. As far as the other amendment is concerned, it is for bringing the other trustees on record. I am not inclined to interfere with the other part of th amendment which has been granted by the lower court. However, in so far as the deletion of admission is concerned it is settled law that by way of amendment the admission in the plaint or written statement cannot be allowed to be taken away. This Court has in the case of Rasiklal Manikchand Dhariwal and ors vs. Kishore Washwani and Nitesh Ashok Wadhwani,reported in 2005 (2) Mh L J 6ll, after referring to various Supreme Court judgments it has been held that such an amendment which seeks to delete admission in the plaint cannot be permitted when it materially affects the case. The averment as it stood in para 4 of the plaint does not gives Small Causes Court jurisdiction to try the case particularly in view of the judgement of the division bench of this court in the case of Ramesh Dwarkadas Mehra vs Indravati Dwarkadas Mehra, reported in 200l(4) Mah LJ 483. It has been held therein that Small Causes Court has no jurisdiction to entertain and try suit in cases of gratutious licencee. It is not permissible in law to delete the admission in the plaint by way of amendment by which the court which

did not have jurisdiction to entertain the suit at its inception would acquire jurisdiction by deletioin of such an admission. In that light of the matter the impugned order in so far as it permits amendment by deletioin of para 4 as set out hereinabove is required to be set aside. The impugned order to the extent of amendment to the deletion of the aforesaid averment in para 4 and to insert necessary averment that the petitioner is paying Re l. per week as licence fee is not that of gratuitous licensee should be rejected. However the averment as regards bringing the other trustees is concerned, is confirmed. The petition is disposed of accordingly with no order as to costs.